

STATE OF HAWAI‘I  
HAWAI‘I LABOR RELATIONS BOARD

In the Matter of

UNITED PUBLIC WORKERS, AFSCME,  
LOCAL 646, AFL-CIO,

Complainant(s),

and

CHRISTINA KISHIMOTO, Superintendent,  
Department of Education, State of Hawai‘i;  
and CONNECTIONS, A NEW CENTURY  
PUBLIC CHARTER SCHOOL,

Respondent(s).

CASE NO(S). CE-01-539

ORDER NO. 3741

ORDER GRANTING, IN PART, AND  
DENYING, IN PART, COMPLAINANT’S  
MOTION FOR REMEDY AND FOR  
AWARD OF ATTORNEYS’ FEES AND  
COSTS

**ORDER GRANTING, IN PART, AND DENYING, IN PART, COMPLAINANT’S  
MOTION FOR REMEDY AND FOR AWARD OF ATTORNEYS’ FEES AND COSTS**

**1. Introduction and Statement of the Case**

**1.1. Initial Proceedings**

Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (Complainant UPW) filed a prohibited practice complaint (Complaint) with the Hawai‘i Labor Relations Board (Board), alleging Respondents CHRISTINA KISHIMOTO, Superintendent, Department of Education, State of Hawai‘i (Kishimoto); and CONNECTIONS, A NEW CENTURY PUBLIC CHARTER SCHOOL (Connections, and collectively with Kishimoto, Respondents) committed prohibited practices by wilfully violating Hawaii Revised Statutes (HRS) §§ 89-3, 89-8(a), 89-9(a), and 89-13(a)(1), (5), (7), and (8) by not renewing James Ah Sing’s (Ah Sing) custodian position at Connections under a March 15, 2004 Stipulation and Order in Board Case No. CE-01-537.

In 2007, the Board issued Order No. 2457 which, among other things, grants Complainant’s motion for summary judgment. Respondents filed an appeal, and the Third Circuit vacated Order No. 2457 and remanded the matter to the Board.

On remand, after conducting a hearing on the merits, the Board issued Decision No. 491, which, among other things, dismisses the HRS § 89-13(a)(8) claim for Complainant's failure to exhaust his contractual remedies, in accordance with the Hawai'i Supreme Court's (HSC) precedent. *See, Hokama v. University of Hawaii*, 92 Hawai'i 268, 271 990 P.2d 1150, 1153 (1999); *Poe v. Hawaii Labor Relations Board*, 97 Hawai'i 528, 536, 40 P.3d 930, 938 (2002); *Poe v. Hawaii Labor Relations Board*, 105 Hawai'i 97, 101, 94 P.3d 652, 656 (2004).

Decision No. 491 holds that Ah Sing was not covered by the March 15, 2004 Stipulation and Order; and that Ah Sing failed to carry its burden of showing Respondents contravened the duty to bargain in good faith in violation of HRS § 89-13(a)(1), (5), and (7) by converting Ah Sing's position from civil service to non-civil service. Decision No. 491 further holds that, while UPW established that Connections' cancellation of Ah Sing's rubbish contract constituted a willful retaliation against Ah Sing in violation of HRS § 89-13(a)(4), UPW failed to further show that the retaliatory conduct violated HRS § 89-13(a)(1) by interfering, restraining, or coercing Ah Sing in the exercise of his rights under HRS Chapter 89.

UPW filed a second appeal in this matter from Decision No. 491 to the Third Circuit Court, which affirmed Decision No. 491. UPW appealed the Third Circuit Court's decision to the Hawai'i Intermediate Court of Appeals and subsequently requested to transfer the case to the HSC. The HSC granted UPW's application for transfer of the appeal.

The HSC issued a Memorandum Decision, which held that the Third Circuit Court erred in vacating the Board's June 8, 2007 interlocutory summary judgment in the first appeal. The HSC remanded the matter to the Board for further proceedings consistent with the memorandum opinion. The HSC further provided that if the remedy ordered by the Board in its June 8, 2007 order is no longer available or appropriate that "the legislature has empowered the Board with discretion in ordering affirmative remedies[.]"

## **1.2. Proceedings on Remand from the HSC**

UPW filed a Motion for Remedy and for Award of Attorneys' Fees and Costs (Motion for Remedies), which Respondents opposed. UPW supported the Motion for Remedies with five Supplemental Declarations.

The Board held an evidentiary hearing on the Motion for Remedies, and UPW presented testimony from Ah Sing and Luther Beck (Beck), and the Board admitted UPW Exhibits REM-A through REM-L into the record. At the hearing, UPW requested a monetary remedy for Ah Sing in lieu of reinstatement, based on lost wages, interest, and attorney's fees and costs.

The parties submitted simultaneous Post-Hearing Briefs and, based on those briefs, the evidentiary hearing, and the entirety of the record, the Board issues the following order.

## **2. Findings of Fact**

### **2.1. Employment at Connections**

Until 2003, Connections employed Ah Sing as a custodian. During this employment, Ah Sing was a member of bargaining unit 1 (BU 1). UPW is the exclusive representative for BU 1.

In 2003, Connections did not renew Ah Sing's employment contract, meaning that Ah Sing's last day of work was June 30, 2003. At that time, Ah Sing was a full-time hourly employee who fell into the classification "BC-01" for the salary schedules under the relevant BU 1 collective bargaining agreement (CBA) in effect at that time.

The CBA contains salary schedules for different classifications of employees within the bargaining unit. The salary schedules in the CBA include provisions to "step-up" or increase a BU 1 member's rate of pay. The CBA further sets out that full-time employees work a total of 40 hours a week.

From July 1, 2003 through June 30, 2004, the BC-01 hourly rate of pay was \$11.93.

From July 1, 2004 through September 2, 2004, the BC-01 hourly rate of pay was \$11.97.

From September 3, 2004 through December 31, 2004, the BC-01 hourly rate of pay was \$12.27.

From January 1, 2005 through September 30, 2005, the BC-01 hourly rate of pay was \$12.88.

From October 1, 2005 through December 15, 2005, the BC-01 hourly rate of pay was \$13.62.

From December 16, 2005 through December 31, 2005, the BC-01 hourly rate of pay was \$13.79.

The CBA also contains provisions under which BU 1 members accrue sick and vacation leave. Under the CBA, BU 1 members earn 14 hours of vacation per month. The CBA further provides that, when an employee is discharged, the employee will be paid in a lump sum for accumulated vacation leave, computed on the basis of accumulated vacation hours multiplied by the hourly rate of pay on the effective date of discharge.

The CBA further sets out that BU 1 members earn 14 hours of sick leave per month. The CBA does not set out a lump sum calculation for sick leave.

## **2.2. Employment from 2003-2005; Vacation Accrual**

After Ah Sing's employment ended on June 30, 2003, he began to look for work immediately as a custodian. Ah Sing continued to do work for Connections through a rubbish contract for a portion of 2003, until Connections ended that contract.<sup>i</sup> Ah Sing did not find alternative employment in 2003.

In 2004, Ah Sing found employment with Pharm East Hawaii for a period of time. After being employed by Pharm East Hawaii, Ah Sing took a job with Ludwig Construction. However, due to a dispute about the amount Ludwig Construction paid Ah Sing, he quit and returned to Pharm East Hawaii.

After leaving Pharm East Hawaii for a second time in 2004, Ah Sing took a job with Tremendous Enterprises, Inc. Ah Sing stayed with Tremendous Enterprises, Inc. until it went bankrupt in 2005. Within a few days of Tremendous Enterprise, Inc. going bankrupt, Ah Sing began to work for Tree Works through the HPS Temp Service.

Neither Pharm East Hawaii nor Ludwig Construction provided Ah Sing with vacation or sick leave. Tremendous Enterprises, Inc. provided vacation time that would be used for sick leave as well; however, to access this vacation time, Ah Sing would need to work for Tremendous Enterprises, Inc. for a full year, with no time off during that year.

## **2.3. Health Insurance from 2003-2005**

The end of Ah Sing's employment at Connections meant that he did not have health insurance until he married in October of 2003 and became covered by his wife's insurance plan, at an additional premium cost.

None of Ah Sing's employers from 2004-2005 offered health insurance that would be cheaper than paying that additional premium cost, so Ah Sing continued to pay this premium cost through 2005 so that he could remain on his wife's insurance plan.

## **2.4. UPW Attorneys**

During this case, multiple attorneys represented UPW. Takahashi and Covert (Takahashi) originally prosecuted this case, and Takahashi's last invoice was on June 30, 2020. Koshiba, Price & Gruebner (Gruebner) became counsel of record for this case on July 11, 2020. UPW did not retain the invoices from Takahashi before May 2014.

## **3. Analysis and Conclusions of Law**

As the parties agree that reinstatement would be inappropriate in this case, the Board turns to its powers to "make orders in favor of employees making them whole, including back

pay with interest, costs, and attorneys' fees." HRS § 377-9. The Board lays out its calculations of these below.

### **3.1. Lost Wages and Mitigation**

Although the Board has not often waded into determining the specific amounts of lost wages that should be awarded to prevailing parties, HRS § 377-9 expressly gives the Board the ability to award back pay. Further, the Board has the right to exercise all powers reasonably necessary to make its express powers effective. Hawaii Gov't. Emples. Ass'n. v. Casupang, 116 Hawai'i 73, 97, 170 P.3d 324, 348 (2007).

The Board's objective when considering lost wages is to restore, to the extent possible, restructure the circumstances that would have existed if there had been no prohibited practice. *See, Int'l Longshore & Warehouse Union*, 370 NLRB No. 104, slip op. at 6 (2021). Because the Board may not be able to precisely determine exact amounts from the available facts, the Board will adopt a formula that is reasonably designed to approximate what Ah Sing would have received without Respondents committing a prohibited practice. Id.

#### **3.1.1. Lost Wages Calculations**

The Board first looks to the calculations of what Ah Sing would have been paid if his employment with Connections continued, and how Ah Sing mitigated those damages. UPW submitted a calculation of Ah Sing's wages based on the relevant CBA, totaling \$64,666.00 in lost wages and \$5,380.20 in the relevant vacation pay for the period of July 1, 2003-December 31, 2005. Respondents do not dispute these calculations.

However, given the fact that in UPW's interest calculations, UPW's calculations come to a different sum of gross lost wages, the Board has concerns about simply utilizing UPW's presented numbers. Based on these concerns, the Board performs its own calculations as follows.

Ah Sing, as an hourly employee, worked 40 hours a week. For calculation purposes, the Board will construe this as working five days a week, Monday through Friday, for a period of eight hours a day.

<b>Time Period</b>	<b>Hourly Rate</b>	<b>Hours Credited</b>	<b>Total Lost Wages</b>
7/1/03-6/30/04	\$ 11.93	2096	\$ 25,005.28
7/1/04-9/2/04	\$ 11.97	368	\$ 4,404.96
9/3/04-12/31/04	\$ 12.27	688	\$ 8,441.76
1/1/05-9/30/05	\$ 12.88	1560	\$ 20,092.80
10/1/05-12/15/05	\$ 13.62	432	\$ 5,883.84
12/16/05-12/31/05	\$ 13.79	88	\$ 1,213.52
		<b>TOTAL:</b>	<b>\$ 65,042.16</b>

Accordingly, the gross sum of Ah Sing's lost wages is \$65,042.16.

### **3.1.2. Mitigation**

Respondents do not dispute that Ah Sing attempted to mitigate his damages. Although Ah Sing did not find additional work in 2003, he did find some work in 2004 and 2005, and by 2006, Ah Sing's income surpassed what he would have made had he stayed at Connections.

According to the evidence submitted, Ah Sing did not work in 2003 after his employment with Connections ended; he received \$12,243.29 in wages in 2004 from his various employers; and he received \$21,877.33 in wages in 2005. As noted above, Ah Sing did not receive vacation leave or pay from any of these employers.

### **3.1.3. Total Back Pay**

The Board has reviewed various back pay formulas and, in keeping with the policy of restoring Ah Sing to the status quo, will reduce Ah Sing's gross wages by his interim earnings to yield the correct net back pay due to him. *See, e.g., NLRB v. Ambrose Distrib. Co.*, 439 F.2d 720, 720 (9th Cir. 1971).

Calculating the difference between what Ah Sing would have received at Connections and what he actually made at his various employers, the Board awards Ah Sing **\$30,921.54** in back pay for lost wages.

## **3.2. Vacation and Sick Leave**

Turning to the question of Ah Sing's vacation and sick leave, the Board accepts that the CBA does not speak to how a lump sum of sick leave would be calculated. However, for the purpose of determining what Ah Sing is owed in this case, the Board will treat the calculations for vacation and sick leave the same.

At 14 hours a month for a period of 30 months, Ah Sing would have accrued 420 vacation hours and 420 sick leave hours. Ah Sing's salary rate at the end of 2005 was \$13.79. Accordingly, the Board awards Ah Sing \$11,583.60 in back pay for vacation and sick leave.

### 3.3. Interest

UPW asks for interest on Ah Sing's back pay, and Respondents argue that prejudgment interest cannot be awarded against the State.

Respondents rely on HRS § 661-8, which states:

No interest shall be allowed on any claim up to the time of the rendition of judgment thereon by the court, unless upon a contract expressly stipulating for the payment of interest, or upon a refund of a payment into the "litigated claims fund" as provided by law.

Respondents further cite to HRS § 662-2, which states

The State hereby waives its immunity for liability for the torts of its employees and shall be liable in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

UPW counters Respondents' argument by pointing to a case where the HSC held that the award of prejudgment interest by an arbitrator is permitted. In re Hawaii State Teachers Ass'n, 140 Hawai'i 381, 400 P.3d 582 (2017) (HSTA). In HSTA, the HSC found, among other things, that HRS § 658A-21(c) authorizes arbitrators to award remedies a court might be prohibited from granting; therefore, arbitrators have the authority include prejudgment interest as an element of complete compensation. HSTA, 140 Hawai'i at 399-400, 400 P.3d at 600-01.

The Board disagrees with UPW's implication that HSTA stands for the idea that prejudgment interest may be awarded by anyone "other than by a court." The HSC in HSTA clearly looked to the specific statutes that govern arbitrators to make its determination, and the Board is not an arbitrator. The Board is not governed by HRS § 658A; therefore, the fact that arbitrators may be able to award prejudgment interest does not apply to the Board.

Just as the Board is not an arbitrator, the Board is not a court. While the Board does not have jurisdiction to interpret HRS §§ 661-8 and 662-2, on their faces, these sections appear to be referring specifically to civil judgments in a court, not necessarily to quasi-judicial proceedings.

However, for the sake of argument, the Board will consider whether Respondents' stated sections apply to this matter. The Board's prohibited practice procedures are laid out in HRS § 377-9, as referenced in HRS § 89-14<sup>ii</sup>.

When considering the prevention of unfair labor practices or, in this case, prohibited practices, HRS § 377-9(d) states, in relevant part: "Final orders may...make orders in favor of employees making them whole, including back pay with interest, costs, and attorneys' fees."

The HSC has followed the principle that if a general statute and a specific statute are plainly irreconcilable, the specific statute will be favored. Richardson v. City and County of Honolulu, 76 Haw. 46, 54-55, 868 P.2d 1193, 1201-02 (1994). In this case, the Board views HRS §§ 661-8 and 662-2 as the more general statutes, as they apply broadly to civil cases against the State, and HRS § 377-9 is the more specific statute, as it applies specifically to unfair labor practices and prohibited practices.

Accordingly, the Board finds that it has the authority to award prejudgment interest in this case.

Turning next to the question of at what rate the Board should use to calculate this interest, the Board notes that a section in one of the chapters that Respondents rely on for their argument against prejudgment interest, interest against the State in civil tort proceedings is computed at the rate of four percent a year from the date of judgment. HRS § 662-8.

Although HRS § 377-9(d) lays out the Board's authority to award interest, it does not dictate how such interest should be calculated. UPW argues that the Board should calculate interest in the same way as the National Labor Relations Board (NLRB) and compound interest daily. *See, New Horizons for the Retarded, Inc.*, 283 NLRB 1173 (1987) and Kentucky River Medical Center, 356 NLRB 6 (2010). Respondents do not offer an alternative means of calculating interest.

Accordingly, the Board orders that, on the back pay, including vacation pay due in this case, Respondents must pay interest compounded on a daily basis at the State's rate for the underpayment or nonpayment of tax. *See*, HRS § 231-39(b)(4).

### **3.4. Attorney's Fees**

The U.S. Supreme Court (U.S. Sup. Ct.) and the HSC have both adopted roughly the same "lodestar" test to determine the reasonableness of attorneys's fees: consider the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. *See, Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); Kaleikini v. Yoshioka, 129 Hawai'i 454, 469, 304 P.3d 252, 267 (2013). The party requesting fees, namely UPW, has the burden to prove that the requested fees were reasonably and necessarily incurred. *See, Sharp v. Hui Wahine*, 49 Haw. 241, 246, 413 P.2d 242, 247 (1966) (Sharp).

There are three separate types of attorney's fees that the Board must consider—first, the Takahashi billings for which there are no invoices; second, the Takahashi billings for which there are invoices; and third, the Gruebner billings.

Respondents do not object to the Gruebner billings. However, Respondents object to the entirety of the Takahashi billings for a variety of reasons. Respondents argue, among other



things, that, as the pre-May 2014 billings do not have supporting documents, the Board cannot determine whether the billings are reasonable; and that the Board may not be able to award attorney fees for matters that were handled in court on appeal and outside of the Board's purview.

Given the fact that UPW prevailed in this case, the Board must first determine how many hours were spent performing appropriate services in this case. DFS Grp. L.P. v. Paiea Prop., 110 Hawai'i 217, 222, 131 P.3d 500, 505 (2006) (DFS). After making that determination, the Board will turn to the relevant attorney's rates to consider the reasonableness of the rates. The value of an attorney's time is generally reflected in the normal billing rate. Chun v. Bd. of Trustees of the Emp. Ret. Sys., 92 Hawai'i 432, 442, 992 P.2d 127, 137 (2000).

When it comes to the various attorney's rates, Respondents do not specifically object to the stated rates for the various attorneys attached to this case. The Board has considered those rates and concurs that the charged rates appear to be reasonable. Therefore, the Board will use the charged attorney's rates in calculating the lodestar fee.

The Board, accordingly, turns to the number of hours that should be approved. The Board will categorize the attorney's fees into three categories—those amounts prior to May 2014, for which UPW primarily relies on a ledger of the payments made, those amounts billed by Takahashi after May 2014, and those amounts billed by Gruebner.

#### **3.4.1. Billings Prior to May 2014**

Addressing the billings prior to May 2014, the Board agrees with Respondents that, without supporting documents, the Board cannot determine the reasonableness of the bills, as required by law. As noted above, UPW has the burden to prove that the requested fees were reasonably and necessarily incurred. Sharp, 49 Haw. at 246.

UPW admits that it has no documentation of the attorney's fees in this case prior to May 2014 beyond line items indicating that it paid fees to Takahashi at various points. UPW states that this lack of documentation is due to UPW's internal records retention policy.

In Haw. Leasing v. Klein, 5 Haw. App. 450, 457 n.7, 698 P.2d 309, 314 n.7 (1985), the Hawai'i Intermediate Court of Appeals (ICA) found that an affidavit and a ledger sheet do not constitute sufficient evidence to sustain an award of attorney's fees if the affidavit and ledger sheet do not contain itemizations of the time and types of legal services rendered.

Given that UPW's lack of documentation is due to its own policy and not based on any bad action of the Respondents, the Board finds no reason to waive UPW's burden to prove the fees are reasonably and necessarily incurred.

Accordingly, all requested attorney's fees without documentation, namely those amounts incurred prior to May 2014, are denied.

### **3.4.2. Takahashi Billings from May 2014 – June 2020**

Turning to the next section of requested fees, the Board considers Respondents' argument that the Board may not be able to award attorney's fees for matters handled in court on appeal. The Board concurs.

The Hawai'i Rules of Appellate Procedure (HRAP) have specifically set forth the method through which parties may recover their appellate costs. HRAP Rule 39(d). HRAP Rule 39(d)(2) specifically states that, "A request for fees and costs or necessary expenses is more appropriately filed in the court where the work was performed."

A number of the Takahashi billings from May 2014 through June 2020 deal with the second appeal from this case, rather than this case itself. Accordingly, the Board will not award any fees that relate to the appeal. The Takahashi billings indicate whether the work was done for an HLRB case, a Circuit Court case, or an Appeal case. Based on those representations, the Board will deny all fees incurred by Takahashi after September 30, 2017.

Although Respondent asks the Board to deny all Takahashi billings, the Board finds that to make such a ruling would be an abuse of the Board's discretion. The Board has an obligation to consider whether these billings are reasonably and necessarily incurred. DFS, 110 Hawai'i at 222, 131 P.3d 505. Therefore, the Board will do a thorough analysis of the Takahashi billings.

The evidence submitted by UPW in support of these attorney's fees include much more detail than the ledger. However, Takahashi's invoices contain a number of issues that the Board must address further.

#### **3.4.2.1. Clerical Tasks**

The HSC has directed courts to reduce attorney's fees for the performance of clerical tasks. Schefke v. Reliable Collection Agency Ltd., 96 Hawai'i 408, 458, 32 P.3d 52, 102 (2001) (Shefke). Clerical costs are considered part of an attorney's overhead, reflected in the charged hourly rate, and cannot be billed separately. Hawaii Fire Fighters Association, IAFF, Local 1463 v. Blangiardi, et al., Board Case Nos. 14-CE-11-845, 16-CE-11-887, Order No. 3730, \*7 (Apr. 5, 2021) (HFFA Order) (citations omitted).

A variety of tasks are considered clerical, including reviewing notices, scheduling, calendaring, notice to clients of dates and deadlines, informing clients if and when documents have been filed, filing documents, copying, printing, and scanning documents, and communicating with Board staff. Id. Although selecting exhibits is a legal task, review and/or organization of those exhibits is clerical. Id.

Many of Takahashi's billings include clerical tasks. The Board will, accordingly, make its reasonable determination of the time that should be reduced for those tasks. The Board's determinations can be found in the table attached as Exhibit A.

#### **3.4.2.2. Block Billing**

Block billing occurs when multiple tasks are claimed in one block, without detailing the amount of time spent on each task. Gurrobat v. HTH Corp., 135 Hawai'i 128, 136, 346 P.3d 197, 205 (2015) (Gurrobat). Block billing is problematic because it makes it difficult for the Board to determine the reasonableness of the billed hours. Id. at 135, 346 P.3d at 204.

The Board cannot automatically reject block-billed entries and must use common sense when reviewing alleged block-billed entries. Id. at 135-36, 346 P.3d at 204-05. However, block-billed hours may be excluded where the Board cannot distinguish between compensable and non-compensable tasks. Haw. Ventures, LLC v. Otaka, Inc., 116 Hawai'i 465, 475, 173 P.3d 1122, 1132 (2007). Where the Board can make such a distinction, block-billed entries may be reduced by a percentage to account for the increased difficulty in determining the reasonableness of these hours. Gurrobat, 135 Hawai'i at 135, 346 P.3d at 204.

Almost every single itemized entry in the Takahashi billings is a block-billed entry, and many have clerical tasks included in those entries. Further, almost all entries contain tasks completed over a period of days.

Certain aspects of the Takahashi billings, when considered with common sense, can be broken into a single task, such as preparing for the hearing on the merits. *See*, Gurrobat, 135 Hawai'i at 136, 346 P.3d at 205. However, others are clearly block-billed entries that cannot be considered one task. For example, one entry's itemization states:

Review and analysis of prior outline for Dayton M. Nakanelua testimony, review exhibits, meeting with Dayton M. Nakanelua to review scope and purpose of his testimony, draft memorandum summarizing his points and observations, revise and update outline of his testimony, prepare list of follow up needed for next hearing date (3/3/15); Review list of dates Dayton M. Nakanelua available to testify in May, 2015, draft email to opposing counsel if any conflicts on those dates (3/24/15); Review Board rules, draft motion to schedule hearing date in case, draft affidavit in support of same (3/26/15).

Accordingly, the Board faces considerable difficulty in interpreting some of the block-billed entries, especially when impermissibly billed clerical tasks are included. Therefore, as permitted by Gurrobat, the Board has reduced the attorney's fees based on the Takahashi billings as indicated in the table attached as Exhibit A.

**3.4.2.3. Takahashi Rates**

Based on the evidence submitted by UPW, the applicable hourly rates are as follows:

Indicators	May 2014-December 2014	January 2015-September 2017
HT	\$260.00	\$320.00
RC	\$240.00	\$280.00
DL/Davina Lam	\$145.00	\$145.00

**3.4.2.4. Total Takahashi’s Attorney’s Fees**

At the reasonable rates accepted above, this brings attorney’s fees for Takahashi’s work to \$44,508.50. UPW has represented, and Respondents have not objected to the fact that these attorney’s fees should be reduced by \$4,329.24 for work related to a retaliation claim that the Board previously ruled on. This reduction brings the total amount of attorney’s fees due based on Takahashi’s work to \$40,179.26.

The GET of this amount at 4.712% is \$1,893.25.

Accordingly, the Board orders Respondents to pay **\$42,072.51** for Takahashi’s work on this case.

**3.4.3. Gruebner Billings; Table of Gruebner Attorney’s Fees**

Turning next to the Gruebner billings, the Board notes that Respondents do not raise objections to the attorney’s fees submitted by Gruebner. However, this does not relieve the Board of its obligation to perform a thorough analysis of these fees as well.

The Gruebner billings contain entries that have multiple tasks included in a single line item; however, unlike the Takahashi billings, Gruebner indicates the time spent on each task. The Board finds, accordingly, that none of the entries are block-billed.

However, the same cannot be said for clerical tasks. The Gruebner billings include some obviously clerical tasks, such as communications with the Board staff. Accordingly, the Board will reduce the Gruebner hours as indicated in the table attached as Exhibit B.

Further, many of the Gruebner billings entries have been redacted to the point where the Board has difficulty determining whether or not these fees were reasonably and necessarily incurred. For example, when the submitted evidence says “email to L. Ho” but provides the Board with no context as to what the email was regarding, the Board cannot tell whether this

email was a necessary part of the case or whether it was an impermissible clerical task, for example, informing the client of the filing of documents or scheduling matters. Given that UPW bears the burden of proof to show that these fees were reasonably and necessarily incurred, where the Board cannot make such a determination of the reasonableness and necessity of the entry based on the context of the entry, the Board will presume these entries were clerical tasks and deny those attorney fees, as indicated in the table attached as Exhibit B.

Finally, some of the entries listed in the Gruebner billings do not appear to be reasonably related to the proceedings before the Board, as they appear to reference a settlement proposal that was not before the Board and did not resolve this case. Accordingly, the Board will deny those fees, as indicated in the table attached as Exhibit B.

According to UPW, the relevant rates are \$275.00/hour for James Koshiba and Lisa Gruebner's work, and \$225.00/hour for Jonathan Spiker's work. Respondents do not dispute these rates; therefore, the Board will utilize them for its calculations.

At the reasonable rates accepted above, this brings attorney's fees for Gruebner's work to \$33,195.00. The GET of this amount at 4.712% tax is \$1,564.15.

Accordingly, the Board orders Respondents to pay **\$34,759.15** for Gruebner's work on this case.

#### **4. Substantiated Costs**

Turning to the request for costs, the Board notes that costs do not require as much consideration as attorney's fees as costs are easily proven by the actual receipts for expenditures. Porter v. Hu, 116 Hawai'i 42, 67, 169 P.3d 994, 1019 (App. 2007) (citation omitted).

UPW submitted receipts for court reporter services totaling \$5,392.67. The Board will accept these receipts as UPW's actual expenditures on court reporters.

UPW also submitted a request for copying costs without itemization. Although the Board's administrative rules do not speak to appropriate costs for copying, the Board notes that the Hawai'i Rules of Appellate Procedure (HRAP) permits recovery of costs for printing or otherwise producing necessary copies of briefs as long as those costs do not exceed twenty cents per page. HRAP 39(c). Accordingly, less than twenty cents per pages appears to be a reasonable cost for copying. Gruebner represents that the charged fee for copies is ten cents per page, which appears to be reasonable.

However, UPW's submitted evidence does not provide the Board with the number of pages copied. Further, UPW requests \$53.95 in copy fees, which would be impossible at the rate of ten cents per page<sup>iii</sup>. The Board will, therefore, award \$53.90 in copy fees, which would comport with the charged rate provided by Gruebner.

Finally, UPW requests \$1.01 in postage fees. The Board finds this amount reasonable and will award such.

Accordingly, the Board awards \$5,447.58 to UPW as costs.

**5. Order**

Accordingly, the Board hereby orders:

1. Respondents to pay to Ah Sing a total of \$30,921.54 in lost wages and \$11,583.60 in vacation pay, with interest compounded daily, less all appropriate federal and state taxes;
2. Respondents to pay to UPW a total of \$42,072.51 in attorney's fees for Takahashi's work on this case, which includes the taxes requested;
3. Respondents to pay to UPW a total of \$34,759.15 in attorney's fees for Gruebner's work on this case, which includes the taxes requested; and
4. Respondents to pay to UPW \$5,447.58 in costs.

This case is closed.

DATED: Honolulu, Hawai'i, \_\_\_\_\_ May 10, 2021 \_\_\_\_\_.

HAWAI'I LABOR RELATIONS BOARD

\_\_\_\_\_  
MARCUS R. OSHIRO, Chair

\_\_\_\_\_  
SESNITA A.D. MOEPONO, Member

\_\_\_\_\_  
J N. MUSTO, Member

Copies sent to:

Lisa Anne Gruebner, Esq.  
James Halvorson, Deputy Attorney General

UPW v. CHRISTINA KISHIMOTO, ET AL.  
ORDER GRANTING, IN PART, AND DENYING, IN PART, COMPLAINANT’S MOTION  
FOR REMEDY AND FOR AWARD OF ATTORNEYS’ FEES AND COSTS  
CASE NO(S). CE-01-539  
ORDER NO. 3741

---

<sup>i</sup> In prior proceedings before the Board, Ah Sing received remedies related to this contract.

<sup>ii</sup> HRS § 89-14 states in relevant part, “Any controversy concerning prohibited practices may be submitted to the board in the same manner and with the same effect as provided in section 377-9...”

<sup>iii</sup> The Board recognizes that, in reviewing the Gruebner billings, color copies appear to be charged in a separate line item and they appear to be charged at a different rate, as this line item is for \$35.55. If color copies were charged at the same rate of ten cents per pages, it would be strange for Gruebner to charge for half of a page. However, as no alternative rate for color copies is referenced in the record, the Board must rely on the representation of the applicable cost being ten cents per page for all copies.

## Exhibit A

Date	Description	Hours (Less Cler.)	Block Reduction (%)	Rate
5/31/2014	Review of agency and court proceeding to determine why it is taking so long (5/16/14); Preparation of tentative exhibits to be used in a motion to be filed with HLRB (5/17/14); Legal research on remand and scope of issues before the agency in light of court proceeding (5/18/14); Preparation of affidavit and exhibits 1 through 7 (5/18/14, 5/19/14); Final review and filing with the labor board (5/19/14).	2	50%	\$ 260.00
6/31/14	Receipt, review, and analysis of Order No. 3005 denying the employer's motion to dismiss and/or for summary judgment and other motions filed by the union (7/10/14); Letter to the state director on the issues of civil service coverage (7/10/14); Letter to James Ah Sing (7/10/14); Review of case file on prior pre-hearing statements and documents in preparation of pre-hearing conference (7/10/14); telephone discussion with James Ah Sing and his wife regarding Board orders and preparation for hearings (7/19/14).	0.5	50%	\$ 260.00
6/31/14	Review order, discussion with Ah Sing and his wife, review prior worksheet on back pay issue, summarize notes of discussions, research	0.25	0%	\$ 260.00
9/30/2014	Review draft of list of witnesses, review summaries, revise and reorder the list of witnesses, review description of what witnesses expected to testify about if called (9/25/14).	0.25	0%	\$ 240.00
9/30/2014	Analysis of memorandums of interviews correspondences, pleadings (civil and HLRB) since 2003, to locate notes of or references to witnesses identified in 2003, 2004 and 2009 prehearing statements and summarize titles, documents, and references to named witnesses in support (9/23/14); Research Connections charter school, DOE charter school office, and State of Hawaii employee public listing information to locate additional information (if any) on former witnesses identified (9/23/14); Teleconference and follow up with June Rabago and UPW Hilo office on unknown witnesses listed [REDACTED] information of the above (9/23/14, 9/24/14); Draft pleading identifying witness list and anticipated testimony based on file review (9/23/14; 9/24/14); Research contact or employment information on Charles Higgins, Patricia Hamamoto, Kathleen Watanabe and potential successors (9/25/14); Further teleconferences and communication with June Rabago and UPW Hilo office on [REDACTED] (9/25/14; 9/29/14).	1	50%	\$ 145.00
10/31/2014	Review and analysis of file and review prior declarations, exhibits attached to declarations, additional exhibits and documents in file, interview Ah Sing for witness preparation including background generally, employment background, post-employment activities at the school and his employment, knowledge he has regarding civil service and permanent status, prepare witness outline, interview Roland Kadota to update him on upcoming trial, prepare material to mail to him prior to interview, draft list for follow up with witnesses (10/4/14); Review pleadings, all documents and declarations in the file, select for use as exhibits at trial, prepare order of exhibits and listing to file with the Board, discussion with two potential witnesses for trial (10/14/14); Interview cook at Mt. View School regarding migration of students from Mt. View to Connections, summarize notes of discussion (10/16/14).	5	30%	\$ 240.00



10/31/2014	Review records, interview Roland Kadota for witness preparation, prepare outline, prepare documents for his review, draft letter to Mr. Kadota on the same (10/18/14); Review and analysis of exhibits and edit outline of James Ah Sing, interview Mr. Ah Sing, analysis of financial records from Mr. Ah Sing, prepare documents as exhibits on damages issue (10/19/14).	7	20%	\$	240.00
10/31/2014	Prepare spreadsheet on actual earnings and estimated earnings for purposes of supporting damages claim, review and analysis of deposition of prior School CEO and prepare legend to cross reference trial exhibits with deposition exhibits, analysis of CEO's deposition for preparing outline on current School Administer John Thatcher (10/20/14); Review and analysis of trial exhibits and prior outlines, prepare outline for John Thatcher [REDACTED] review outline for Ah Sing's testimony also (10/21/14).	2	20%	\$	240.00
10/31/2014	Meeting with Ah Sing and Loyna Kamakeeaina to review exhibits he will be questioned about, appearance at hearing and covering opening statement and Superintendent as respondent in the case, direct examination of Ah Sing regarding his employment history generally, his employment at Connections, his status as LTA full-time and civil service, notice of his termination, his rubbish collection service that was terminated after Ah Sing and UPW brought litigation at HLRB, his earnings since 2003, direct examination of Thatcher related to pre-charter status of Connections, post-charter status and its operations, duties of custodian and Schoo's hiring of additional employee under contract to do custodian's janitorial work, to the Board's action to not renewed Ah Sing's contract, review material produced by Thatcher, prepare additional exhibits for testimony of witnesses at next day of hearing (10/22/14).	6	0%	\$	240.00
10/31/2014	Further analysis of employer exhibits, prepare outline for examination of DHRD witness, direct examination of Candy Lewis who was familiar with custodial work after Ah Sing released, introduction of additional exhibits, draft amended witness list to include School's business manager to produce contracts School entered into after Ah Sing left to cover janitorial work and rubbish hauling (10/23/14); Review exhibits and prior outline for Roland Kadota, review with Roland Kadota the exhibits and his testimony related to personnel action forms, Mr. Ah Sing's status from 89-day hire to LTA in civil service and BU1 as shown by exhibits and conclusions that School was seeking to eliminate civil service status by DHRD deadline, revise and edit witness outline, prepare additional documents to send to Mr. Kadota, draft letter to him on same and to UPW regarding travel arrangements and next hearing date (10/29/14).	4	20%	\$	240.00
11/30/2014	Receipt, review, and preparation of summary of the transcript of the October 22, 2014 hearing during which testimony of James Ah Sing, the affected employee as presented at Tr. 18-59 consisting of 41 pages including the employee's civil service status, duties and responsibilities, conduct of employer before and after termination, identity of employer and duties at Mountain View (11/9/14).	1.5	0%	\$	240.00

12/31/2014	Review prior subpoenas, review testimony of prior witnesses regarding use of ARC to clean, draft subpoena for Connections' office manager, draft letter to counsel for DOE to produce witness from Office of Human Resources, draft submission of subpoena to HLRB (12/4/14); Prepare additional exhibit, interview Roland Kadota regarding bargaining unit work for custodial staff, LTA as civil service position, interaction with Ah Sing, lack of communication with school, supplement outline for testimony, prepare outline for school's business manager (12/10/14).	2	20%	\$ 240.00
12/31/2014	Further preparation of Roland Kadota, examination of Sandra Kelly, Business Manager of Connections and its former SASA, direct examination of Roland Kadota, draft letter to counsel for Connections of documents Ms. Kelly is to produce, draft letter to UPW of additional witnesses, review and identify for file documents produced by Ms. Kelly and by counsel for Employer from DHRD (12/11/14).	2	0%	\$ 240.00
1/13/2015	Receipt, review, and preparation of summary of the transcript of the October 22, 2014 hearing during which testimony of Principal John Thatcher was presented at Tr. 60 to 178 consisting of 118 pages including the topics of documents produced to subpoena duces tecum, Connections operations while at Mountain View, role of DOE and DHRD in Connection operations, status of BU1 janitorial position up to present, Ah Sing's personnel file, civil service forms and forms created by DOE versus Connections, performance of janitorial work after Ah Sing released from employment (1/16/15); Receipt, review, and preparation of summary of the transcript of the October 23, 2014 hearing during which testimony of school health aide employee Candy Lewis was presented at Tr. 184 to 236 consisting of 52 pages including the topics of operations of Connections while at Mountain View and later at Kress Building, handling of rubbish after Ah Sing released from employment, other background related to operations of school, draft letter to Dayton M. Nakanelua enclosing summaries and identifying areas where his testimony is needed at next hearing to be scheduled (1/20/15).	5	20%	\$ 280.00
2/28/2015	Receipt, review, and preparation of summary of the transcript of the December 11, 2014 hearing during which testimony of Sandra Kelley, business manager at Connections was presented at Tr. 242 to 305 consisting of 63 pages including her testimony regarding start of the school, the former director of the school Tom Helm, custodian, classroom cleaners, and volunteers from First to Work used at the school for cleaning, and explanation of use of personnel forms in the record and receipt, review, and preparation of summary of the transcript of the December 11, 2014 hearing during which testimony of Roland Kadota, former UPW Hawaii Division Director was presented at Tr. 308 to 242 to 373 consisting of 131 pages including his testimony regarding BU1 custodial bargaining unit work, DOE formula on number of custodians needed to maintain sanitary campus, permanent compared to LTA employees, half-time employees, events at Waimea School on Big Island that prompted inquiry into Ah Sing's case, representation of charter school employees, evaluation of employees, and personnel action forms, (1/30/15).	4	0%	\$ 280.00
2/28/2015	Further analysis of summaries of transcripts and summary of prior administrator Helm's deposition, draft outline for preparation of Dayton M. Nakanelua (2/15/15).	3	0%	\$ 280.00

3/31/2015	Review and analysis of prior outline for Dayton M. Nakanelua testimony, review exhibits, meeting with Dayton M. Nakanelua to review scope and purpose of his testimony, draft memorandum summarizing his points and observations, revise and update outline of his testimony, prepare list of follow up needed for next hearing date (3/3/15); Review list of dates Dayton M. Nakanelua available to testify in May, 2015, draft email to opposing counsel if any conflicts on those dates (3/24/15); Review Board rules, draft motion to schedule hearing date in case, draft affidavit in support of same (3/26/15).	1.5	30%	\$ 280.00
5/31/2015	Meeting with State Director to discuss scope of his testimony, research and analysis of law at time Ah Sing was terminated [REDACTED] further review of exhibits on same issues, draft and revise outline for State Director's testimony at HLRB proceeding (5/18/15).	5	0%	\$ 280.00
5/31/2015	Review and analysis of additional exhibits, revise further outline for State Director, meeting with State Director to review testimony, analysis of prior submissions in the case to support civil service status of employee, draft revisions to outline for State Director, prepare additional exhibits (5/20/15).	5	0%	\$ 280.00
5/31/2015	Further review of exhibits and prior briefing, finalize outline for State Director, direct and redirect examination of State Director, establish deadline on briefing and preserve right to file proposed findings of facts and conclusions of law (5/21/15).	5	0%	\$ 280.00
6/30/2015	Review of the examination of and preparation of a summary of the testimony of the state director held on May 21, 2015, including the direct examination on pages 379 to 415, cross examination on pages 415 to 437, redirect examination on 437 to 440, and questioning by the board on pages 440 to 444 (6/9/15).	2	0%	\$ 280.00
7/31/2015	Review prior briefs filed at HLRB, prepare headings for statement of the case, begin drafting statement of the case for post-hearing brief at HLRB from summarized testimony of James Ah Sing and the exhibits received into evidence, begin drafting statement of the case from summary of testimony of School principal John Thatcher and the exhibits (7/21/15); review pleadings in the Board case, related charter school case and court proceedings related to Board case, select documents for appendix, draft introduction to include procedural history before the Board and the circuit court, continue drafting statement of the case from summary of testimony of School principal John Thatcher and the exhibits (7/22/15).	3	20%	\$ 280.00
10/31/2015	Analysis of summary of transcripts and exhibits resume drafting statement of the case using the conclusion of the testimony of the principal James Thatcher and related exhibits and the testimony of Candy Lewis (nee Mansanas) (52 pages) who helped with custodial duties in the last year of Ah Sing's employment and related exhibits (10/11/15).	2	0%	\$ 280.00
10/31/2015	Analysis of summary of transcripts and exhibits continue drafting statement of the case using the testimony of the School's SASA and then office manager Sandra Kelley (66 pages), former UPW Big Island director Roland Kadota (65 pages) and part of testimony of state director Dayton M. Nakanelua (10 pages) and related exhibits (10/12/15).	7	0%	\$ 280.00

10/31/2015	Analysis of summary of transcripts and exhibits continue drafting statement of the case using testimony of state director Dayton M. Nakanelua (20 pages) and related exhibits (10/13/15); Further analysis of summary of transcripts and exhibits, finish drafting statement of the case using testimony of state director Dayton M. Nakanelua (33 pages) and related exhibits, continue drafting statement of the case incorporating from further review of exhibits 1 -49 in detail (10/14/15).	7	20%	\$ 280.00
10/31/2015	Continue drafting statement of the case from review of exhibit 50, the deposition transcript of Tom Helm (70 pages), former director of operations at Connections during most of Mr. Ah Sing's employment, and analysis of exhibits reviewed by him during the deposition (10/15/15); Analysis of legislation referenced in the exhibit related to [REDACTED] continue drafting statement of the case from review of exhibits 51-69 covering the prior charge that led to the stipulation and order reclassifying charter school employees as civil servants, arbitration awards finding violations based on violations of civil service laws, and legislation and correspondence related to charter schools (10/16/15).	8	20%	\$ 280.00
10/31/2015	Finish drafting statement of the case from analysis of remaining exhibits, Union exhibits 70-71 and respondents exhibits A-Y, begin reorganizing statement of the case (10/17/15); Begin editing and reorganizing statement of the case to emphasize the [REDACTED] (10/23/15); Continue editing and reorganizing the statement of the case related to the termination and abolishment of position actions by the respondents jointly and related to UPW's allegations of unlawful conduct (10/24/15).	7	20%	\$ 280.00
10/31/2015	Prepare additional documents for appendix, analysis of documents, draft statement of the case related to Board's order granting summary judgment with remedial order, draft Standard of Review from review and analysis of prior standards of review in legal memorandums to the Board, start drafting Argument B on legal support for Superintendent's violation of Chapter 89 by repudiating terms of March 2004 stipulation and order, Argument D on Connections unlawful unilateral contractual actions, and Argument E on appropriate remedy (10/26/15); Research and analysis of HLRB cases and court cases discussing proof of wilful misconduct based on "should have known," prepare appendix on same, review prior Board decision in same case and appellate ruling, revise statement of the case on prior ruling of the Board to incorporate appendix, start drafting Argument C on Connections wilful misconduct under Chapter 89, HRS (10/27/15).	5	20%	\$ 280.00
10/31/2015	Research and analysis of cases on estoppel, conduct of state officials in interpreting and applying ambiguous laws, and weight given to attorney general opinions; revise organization of argument, draft Argument B that as joint employer, superintendent was liable for conduct towards Ah Sing in 2003 when separated from employment and 2004 when she failed to reinstate him in a civil service position, draft Argument C that Connections was liable for conduct towards Ah Sing in 2003 when it separated him from employment, draft sub-argument that start up versus conversion school for purposes of civil service status was immaterial given state of the law and dual employment of Ah Sing, draft sub argument to give no weight to attorney general opinions to the contrary, draft argument D on wilful misconduct (10/28/15);	8	0%	\$ 280.00

10/31/2015	Research and analysis of case law on NLRB findings of unlawful conduct in shifting bargaining unit work to non-bargaining unit employees, Hawaii cases on common law agency principles and binding nature of stipulations in future proceedings, and courts awarding of statute retroactively to allow Union to seek back pay with interest and attorney's fees and costs, draft arguments to support violations by Superintendent as joint employer in not placing Ah Sing in 2003 and by failing to reinstate him in 2004, to support violations by Connections by unilateral and discrimination actions and replacing work with staff, volunteers and individuals through lease agreement with Kress Building owner, and to support willful misconduct for violations under Section 89-13, HRS (10/29/15).	8	0%	\$ 280.00
10/31/2015	Research and analysis of [REDACTED] analysis of prior research on joint employers in public sector and private sector, further drafting of statement of the case to incorporate more from prior orders of the Board in the case, draft argument A that [REDACTED] continue drafting Argument C on violations by Connections, continuing drafting argument D on willful misconduct under Section 89-13 (a), HRS, continue drafting argument E on remedy to include reinstatement, make whole with interest to Ah Sing and fees and costs for UPW, draft proposed findings of facts, conclusions of laws and order (10/30/15).	10	0%	\$ 280.00
10/30/2015	Review facts contained in Union's Memorandum of Fact and Law's Statement of the Case sections D, E, and F related to facts giving rise to [REDACTED] (10/27/15); Review and analyze updated NLRB standard for and research relevant footnotes noting cited cases in development of standard (10/27/ 15); Research public sector cases where there was a finding of [REDACTED] and research relevant footnotes noting cited cases in development of standard (10/27/ 15); Research public sector cases where there was a finding of involving 1) charter schools or other public sector offices/divisions; 2) civil service status or where a layoff/termination was involved; or 3) where payroll, personnel management, and job classifications were weighed [REDACTED] (10/27/15)	7	40%	\$ 145.00
10/30/2015	Research private sector cases under NLRB cases involving any factors similar to case or involving [REDACTED] assertion of control by entering into a labor agreement; 3) or where [REDACTED] Additional research Westlaw 231H Labor Headnotes (including [REDACTED] (or under the guise of a layoff), or where the employer controlled personnel actions or job classifications (10/28/15; 10/29/15)	8	20%	\$ 145.00
10/30/2015	Further research for supportive cases findings [REDACTED] and discussion under other Acts (10/29/15); Draft and finalize research memorandum summarizing helpful cases (10/28/15; 10/29/15)	2	30%	\$ 145.00
4/29/2017	Receipt, review, analysis of the proposed findings of fact, conclusions of law, and decision and order of the HLRB ( 4/3/17); Draft letter to state director summarizing Board's proposed order, draft letter to affected employee (4/3/17); Discussion with office of opposing counsel to extend time to review decision and decide on any exceptions and file same, draft stipulation (4/4/17); Discussion with NLRB agent on [REDACTED] review and analysis of case law on same, draft memorandum summarizing discussion (4/5/17).	0.5	40%	\$ 280.00
5/31/2017	Review and analysis of Board's proposed findings and conclusions, draft outline of findings and conclusions for exceptions to be filed (5/29/17)	3	0%	\$ 280.00

6/30/2017	Review and analysis of HLRB 's notice of intent to redact certain information considered personal, identify areas of concern as it would eliminate names and position numbers on civil service lists (5/8/17); Research and analysis Office of Information and court cases finding information was public records, draft UPW's objection to redacting names and position numbers of employees from exhibits (5/9/17); Review and analysis of Order No. 2457 and proposed Order of the Board, draft exceptions to the proposed findings and to the proposed conclusions (6/10/17).	5	30%	\$ 280.00
6/30/2017	Research and analysis of cases cited by the Board in its proposed order to distinguish, continue review and analysis of Board's proposed order, the pleadings in the case, and UPW's post-hearing brief and own proposed findings and conclusions, draft objections to the Board's proposed findings, conclusions and order (6/12/17).	5	0%	\$ 280.00
6/30/2017	Review and analysis of Board's discussion on law of the case as inapplicable, research and analysis of the law, draft objections to rejecting portions of the Board's summary judgment order not covered by the scope of remand, further drafting and editing of exceptions, draft conclusion on remedy sought, draft letter to Union submitting copy of the exceptions to the proposed order (6/13/17).	3	0%	\$ 280.00
6/30/2017	Analysis of Employer's exceptions and additional evidence seeking to admit into record, interview affected employee on his employment status and rebuttal to evidence charter school seeking to admit into evidence on retaliation, draft memorandum summarizing interview (6/26/17); Research and analysis of draft affidavit to support motion to strike new evidence (6/27/17); Review and analysis of docket and file, prepare exhibits to support motion to strike respondents exceptions to Board's proposed decision and order, draft affidavit in support of motion, draft statement of the case in support of motion, draft argument to strike evidence (6/28/17).	7	30%	\$ 280.00
6/30/2017	Research and analysis of [REDACTED] further drafting of argument to strike Exhibit A to respondents' exceptions and reject exceptions, revise affidavit, finalize brief, draft letter to the Union submitting copy of same (6/29/17).	3	0%	\$ 280.00
7/31/2017	Review and analysis of objections filed by UPW and Board's proposed order, begin drafting outline for oral argument (7/12/17); Continue analysis of record and drafting outline for oral argument on UPW's exceptions, review and analysis of UPW's motion to strike Connections' exceptions and exclude new evidence, draft outline for oral argument on same (7/13/17); Finalize outline for oral argument, appearance at HLRB and argue in support of the Union's exceptions, draft summary of rulings by the Board and granting of UPW's motion to strike Respondents' Exhibit A and reject their exceptions, draft letter to the Union on same (7/14/17); Research and analysis of Hawaii Supreme Court cases relied on by HLRB on [REDACTED] related to this case and a DFR case now before HLRB (7/16/17).	7	40%	\$ 280.00
8/13/2017	Review and analysis of Board's final order and in comparison with the proposed order, draft letter to state director on the decision and basis for appeal, draft letter to affected employee of the decision and information needed to file claim for remedy as allowed under the decision (8/21/17).	2	0%	\$ 280.00

9/30/2017	Review and analysis of record and identify issues to raise in motion on affirmative relief under Section 377-9 (d), HRS, interview James Ah Sing on time period he could have continued performing trash services for Connections but for the school's retaliatory action, draft declaration of Ah Sing on same (8/30/17); Discussion with Ah Sing to review his declaration, draft changes to declaration consistent with his ability to continue the refuse hauling work, discussion with Loyna Kamakeeaina to facilitate signing of declaration, draft request to Hawaii Division (8/31/17); Research and analysis of [REDACTED] and statutory basis for HLRB's remedial authority, draft arguments on same (9/1/17).	3	30%	\$ 280.00
9/30/2017	Review and analysis of Section 377-9(d), HRS, and 2009 legislative history, review and analysis of Decision No. 491 specific to requesting affirmative relief attributable to retaliation claim, review and analysis of pleadings relevant to this claim, prepare exhibits in support of affirmative relief, draft declaration of state director, draft affidavit of counsel on fees and costs incurred, draft motion for affirmative relief, draft Introduction, portions of statement of the case, and standard of review and relevant statutory language and provisions (9/2/17); Calculate the copying and legal services specific to retaliation claim, draft worksheet and affidavit to support the fees, review record, draft statement of the case in support of affirmative relief (9/4/17).	5	20%	\$ 280.00
9/30/2017	Further review of pleadings and finalize declaration of State Director with his authority to proceed, finalize affidavit, draft introduction to identify three areas in which affirmative relief sought related to retaliatory claim, finish statement of the case and revise and amend affidavit of counsel as needed, research and analysis of law on retaliation as wilful conduct and repeated violations for each time period where effect of discrimination arises, draft Argument A "Section 377-9 (d), HRS, Provides Affirmative Relief Of Make Whole Remedy, Fees And Costs, And Civil Penalties;" draft Argument B "A Make Whole Remedy For Ah Sing Is The Earnings From The Refuse Hauling Contract Lost By The Retaliatory Action;" draft Argument C. "Prevailing On Retaliation Claim, Union Is Entitled To Award Of Costs And Fees As Part Of A Make Whole Remedy;" and draft Argument D. "Under Act 6, 2009 Haw. Sess. Laws Civil Penalties Will Address The Retaliatory Nature Of Respondent's Conduct;" draft letter to state director submitting motion for affirmative relief with supporting memorandum and declarations (9/5/17); Review motion, analysis of post-hearing brief remedy, research most recent as part of make whole remedy, draft amendment to motion to include interest (9/6/17).	8	20%	\$ 280.00

\$ 40,179.26 \$ 1,893.25 \$ 42,072.51

## Exhibit B

Date	Description	Hours (Less Cler.)	Related Hours	Rate
6/15/2020	Review of file re: Supreme Court decision, underlying complaint in relation to other UPW complaints and remedy.	1.40	1.40	\$ 275.00
6/23/2020	Further review of case file and analysis of next steps in light of Charter Schools cases.	2.00	2.00	\$ 275.00
6/24/2020	Further review of case file and research re: HLRB remedy issues	2.40	2.40	\$ 275.00
6/25/2020	Further review of underlying documents and PPC filed in CE-01-537 (Charter School PPC) re: Stipulation.	0.70	0.70	\$ 275.00
6/26/2020	Review CE-01-537 Stipulation in PPC CE-01-537, confer re. [REDACTED]. CE-01-537 [REDACTED] draft memo re: case an analysis.	2.90	2.90	\$ 275.00
7/1/2020	confer with J. Halvorson re. remand to HLRB, confer with Milton (HLRB) re. remand issues	0.25	0.25	\$ 275.00
7/2/2020	Confer with L Ho re. Stipulation issues, review Proposed Orders re same.	0.70	0.70	\$ 275.00
7/6/2020	Confer with L Ho re status of file;	0.20	0.20	\$ 275.00
7/7/2020	Email from/to UPW	0.00	0.00	\$ 275.00
7/7/2020	Emails from and to, and confer with T. Paterson; letter to client, emails from and to L. Ho re. contact with Ah Sing, draft memo re: issues to be decided with client.	0.50	0.50	\$ 275.00
7/8/2020	Telephone call with L Ho, T Paterson and C Burnett re strategy and next steps, review letter from H Takahashi re entry of Judgment on Appeal,	0.70	0.70	\$ 275.00
7/9/2020	Email from L Ho re contact with J Halvorson	0.00	0.00	\$ 275.00
7/10/2020	email to L Ho	0.00	0.00	\$ 275.00
7/10/2020	draft letter to Ah Sing for L. Ho to send; confer with L. Ho.	0.30	0.30	\$ 275.00
7/14/2020	Confer with L Ho re: status of discussions with J. Ah Sing.	0.10	0.10	\$ 275.00
7/16/2020	Email from and confer with L. Ho re: discussion with J. Ah Sing and tax records; review tax records previously delivered.	0.80	0.80	\$ 275.00
7/17/2020	Confer with J. Halvorson re: remedy issues.	0.10	0.10	\$ 275.00
7/22/2020	Review Proposed Orders in Charter School cases re: [REDACTED]	0.50	0.50	\$ 275.00
7/23/2020	Draft letter to client re: deadlines and status conference in Charter School cases and timing of settlement proposal.	0.00	0.00	\$ 275.00
7/29/2020	Confer with L Ho re status of remedy discussions	0.10	0.10	\$ 275.00
8/4/2020	Emails to and from and confer with L Ho re: status of remedy.	0.40	0.40	\$ 275.00
8/5/2020	Letter to UPW.	0.00	0.00	\$ 275.00
8/7/2020	Confer with L. Ho re: proposal for remedy	0.20	0.20	\$ 275.00
8/14/2020	Email to L. Ho inquiring about status of proposal	0.10	0.10	\$ 275.00
8/18/2020	Confer with L Ho re: status of discussions with J. Halvorson	0.10	0.10	\$ 275.00
9/2/2020	Meeting with L. Ho re: status of cases and proposal.	0.20	0.20	\$ 275.00
9/4/2020	Email from L. Ho to J. Halvorson re: proposed remedy.	0.10	0.10	\$ 275.00
9/8/2020	Confer with L. Ho re: confer status with of proposal, and status conference in Charter School cases [.20]; confer with R. Thomason re: proposal made in [.10].	0.30	0.30	\$ 275.00



9/16/2020	Confer with J. Halvorson re: status of counter-proposal and re. difficulties with remedy.	0.30	0.30	\$ 275.00
9/18/2020	Confer with and email to L. Ho re. remedy issues.	0.80	0.80	\$ 275.00
9/24/2020	Confer with T. Paterson re : status counter-proposal of remedy (.20); discussions confer with [.20]; confer with J. Halvorson re: status of counter-proposal [.20]; confer with L. Ho re: status of counter-proposal [.10].	0.50	0.50	\$ 275.00
10/7/2020	Confer with J. Halvorson re. status of counter-proposal.	0.20	0.20	\$ 275.00
10/13/2020	Confer with M. Hirata (HLRB) re. including case in status [.20]; notice and confer with HLRB re same [.10]	0.00	0.00	\$ 275.00
10/14/2020	Review notice re: status conference from HLRB clerk, confer with HLRB clerk; email to client re. continuance.	0.00	0.00	\$ 275.00
10/14/2020	Confer with J. Halvorson re- status of remedy (and notes).	0.30	0.30	\$ 275.00
10/21/2020	Confer with J. Halvorson re: possible remedies (.40); confer with L. Ho re: same [.30], Status Conference with HLRB [.10]; email to L. Ho [.20].	1.00	1.00	\$ 275.00
10/23/2020	Notice from HLRB re: continued status conference	0.00	0.00	\$ 275.00
11/17/2020	Confer with J. Halvorson re: status of E'r remedy proposal, and notes re: same.	0.40	0.40	\$ 275.00
11/20/2020	Confer with L. Ho re: status of remedy negotiations.	0.30	0.30	\$ 275.00
12/2/2020	Status conference with HLRB (.40); confer with J. Halvorson re: settlement (.20), confer with and email to L. Ho re: same (.70); confer with JETK re: same and strategy (.30).	1.60	0.65	\$ 275.00
12/2/2020	Conference re: options; [REDACTED] (No Charge)	0.30	0.30	\$ 275.00
12/8/2020	Confer with L. Ho re: status of settlement proposal.	0.20	0.00	\$ 275.00
12/14/2020	Email to L Ho re status of settlement proposal	0.20	0.00	\$ 275.00
12/15/2020	Confer with C. Burnett re- settlement issues and support for remedy (.20); email to L. Ho re. same (.10).	0.30	0.00	\$ 275.00
12/17/2020	Emails from and to L. Ho re: status of attempts to contact Mr. Ah Sing.	0.00	0.00	\$ 275.00
12/18/2020	Email from L Ho re sending letter to Mr Ah Sing (.10), draft letter (.50)	0.50	0.50	\$ 275.00
12/22/2020	Review file re: tax documents and prior monetary calculation (.50), confer with C. Burnett re: issues and upcoming motion (.30); email to L. Ho re: inquiry on status (.20); confer re: support for Motion for Remedy (.20); draft Motion for Continuance of Hearing and for Extension of Time (1.30); confer with J Halvorson re- same (.20).	2.70	2.70	\$ 275.00
12/23/2020	Further research for Motion for Remedy.	1.40	1.40	\$ 275.00
12/28/2020	Prepare for and telephone call with L. Ho. C. Burnett, D. Fiaui, L Beck re: claim and strategy (1.10); email to L. Ho and L. Beck re: same [.40]; email from L. Beck re: wage loss calculations (.10)	1.60	1.60	\$ 275.00
12/29/2020	Further draft of Motion for Remedy [2.20]. confer with L. Beck re: remedy (.70). email to L. Ho re- discussion with Mr Ah Sing (.20)	3.10	3.10	\$ 275.00
12/30/2020	Email from and confer with L Beck re Ah Sing's agreement [REDACTED] [.40]; analysis of hearing on Motion (.20), further draft of Motion [.40]; call to J. Halvorson re: rejection of proposal (.10); confer with L. Ho re. [REDACTED] [.10]	1.10	1.00	\$ 275.00

1/4/2021	Review Order from HLRB re: re-setting hearing on Motion for Remedy (.20); email from and confer with L. Beck re: same (.40).	0.00	0.00	\$ 275.00
1/5/2021	Further draft of Motion for Remedy (1.10); follow up including call with L. Beck re- claim for attorneys fees and costs (1.00); confer with L. Beck re. prior payment to UPW and Ah Sing [.30]; confer with L. Beck re: wage claim [.50], confer with L. Ho re: attorneys fees claim [.20]; review file re- prior declarations and Orders (.50).	3.60	3.60	\$ 275.00
1/7/2021	Review file re: filing's in HLRB matter re: Ah Sing declarations and recovery of claimed amounts; further draft Declaration of James Ah Sing.	2.00	2.00	\$ 275.00
1/14/2021	Further review of filed documents re: prior claims and payments.	0.30	0.30	\$ 275.00
1/19/2021	Further review of file and draft of Motion for Remedy.	0.50	0.50	\$ 275.00
1/25/2021	Further review of prior filings with HLRB [2.00], further draft of Motion for Remedy (1.70): confer with and emails from and to L Beck re: revised spreadsheet for lost wages, and review and comment on same (.50)	4.20	4.20	\$ 275.00
1/26/2021	Further research of remedy issue, and review of prior filings and claims [3.50]; emails from and to L. Beck re: claim and meeting with Ah Sing (.20)	3.70	3.70	\$ 275.00
1/28/2021	Confer with L Beck (multiple times) re: issues for discussion with Ah Sing and attorneys' fees claim [.50]. telephone conference with J. Ah Sing and L. Beck [.40].	0.90	0.90	\$ 275.00
1/29/2021	Email from and confer with L Ho re attorneys- fees invoices from Takahashi [.20]. confer with T. Paterson re. remedy issues [.30]	0.50	0.50	\$ 275.00
1/29/2021	Further draft of Motion for Remedy	0.40	0.40	\$ 275.00
2/1/2021	Confer with M. Hiratia (HLRB) re: scheduling issues [.20], confer with J. Halvorson re: same and State opposition and Legislature approval issues, and re: State new proposal [.30]; analysis of same [.20]	0.50	0.40	\$ 275.00
2/2/2021	Confer with L. Ho and C. Burnett re: [REDACTED] [.60]; confer with M. Hirata (HLRB) re: scheduling issues [.20]; review 2017 order re: Board composition at that time [.20]; confer with L. Ho re: [REDACTED] [.30]	0.20	0.20	\$ 275.00
2/4/2021	Preparation for and call to J. Ah Sing with L. Ho [.70]; confer with L. Ho [REDACTED] [.20]	0.00	0.00	\$ 275.00
2/5/2021	Confer with J. Ah Sing, L. Beck, J. Halvorson (separately) re: new hearing date, and emails re: same [.30]; confer with M. Hirata and J Halvorson re: hearing date, status conference and evidence [.40]; review Rules re: and emails to J. Halvorson re: protective order [.40]; review Rules re: and emails to J. Halvorson re: protective order [.40]; draft and file Motion for Protective Order [.80]	1.20	1.20	\$ 275.00
2/10/2021	Email from and confer with L. Beck re: [REDACTED] [.40]; review attorneys' fees invoices for KPG [.20]; further research re: issues on claims for remedy [2.50]	2.70	2.70	\$ 275.00
2/11/2021	Further research re: [REDACTED]	0.00	0.00	\$ 275.00

2/12/2021	Confer with M. Hirara (multiple times) re: hearing on Motion for Remedy [.30]; confer with J. Halvorson re: same [.10]; further research for and draft of Motion for Remedy [5.70]	5.70	5.70	\$ 275.00
2/15/2021	Review and redaction of fees invoices [.70]; emails to L. Beck re: [REDACTED] [.20]; further research and draft of Motion for Remedy [1.60]; confer with J. Ah Sing re: [REDACTED] and notes re: same [1.00].	2.30	2.30	\$ 275.00
2/16/2021	Further draft, review and revision of Motion for Remedy [6.10]; emails to and from, and confer with L. Beck re: [REDACTED] [.40]; emails to and from, and confer with James and Jennifer Ah Sing re: [REDACTED] [.40]	6.10	6.10	\$ 275.00
2/16/2021	Review Hensley v. Eckerhart	0.50	0.50	\$ 225.00
2/17/2021	Redact invoices re: privileged communications [.20]; research re: interest rate [1.20]; draft Supplemental Declarations re: fees invoices and re: interest rate (1.70).	3.10	3.10	\$ 275.00
2/18/2021	Further draft of Supplemental Declaration re: interest rate.	0.30	0.30	\$ 275.00
2/19/2021	Review Orders from HLRB re: Motion for Remedy (.30); confer with M. Hirata re: in- person option (.20); email to L. Ho and L. Beck re: [REDACTED] (.20); review Takahashi invoices and payment chart (.90).	0.90	0.90	\$ 275.00
2/22/2021	Review Takahashi invoices and Project Status Reports re: redaction of privileged entries [3.00]; draft Declaration of L. Beck re: same, and email re: same [1.80]; draft Motion to Redact Invoices (.30); draft Pretrial Statement [.20].	5.30	5.30	\$ 275.00
2/23/2021	Research re: burden and interest [1.20]; email to L. Beck re: [REDACTED] [.20]; draft Pretrial Statement [.80]; review Takahashi invoices for redaction [1.50].	3.50	3.50	\$ 275.00
2/24/2021	Review exhibits for hearing, draft Pretrial Statement and review Confidential Information Forms [2.10]; confer with J. Ah Sing re: [REDACTED] [.30].	2.10	2.10	\$ 275.00
2/25/2021	Redact tax records, draft forms re: confidential information, follow-up re: confidential and redacted information [1.80]; review E'r Opposition and review documents re: same [.40]; further review and revision of Pretrial Statement and Witness List [.50]; review Exhibit List [.50]; confer with M. Hirata re: filing of confidential information form [.20]; review E'r Pretrial Statement [.20].	2.90	2.90	\$ 275.00
2/26/2021	Review interest charts and confer with D. Fiaui re: [REDACTED] [.40]; confer with L. Beck re: [REDACTED] [.30]; review revised interest chart (.10).	0.50	0.50	\$ 275.00
3/1/2021	Draft memo re: pre-hearing issues.	0.30	0.30	\$ 275.00
3/2/2021	Prepare for and appear at prehearing conference [2.00]; follow-up re: transcript and court reporter issues [.20]; confer with J. Ah Sing [.30]; confer with J. Halvorson re: court reporter and transcript [.20].	2.00	2.00	\$ 275.00

3/3/2021	Email to client re: Ah Sing participation at hearing from UPW office [.20]; email to HLRB and J. Halvorson re: tax records [.20]; review interest calculation for HLRB [.30]; confer with L. Beck re: [REDACTED] [.30]; research re: interest exemption for State [.60].	1.30	1.30	\$ 275.00
3/4/2021	Further review of interest calculation and confer with L. Beck re: [REDACTED] [.30]; review W-2's [.20]; confer with J. Ah Sing [.70].	1.60	1.60	\$ 275.00
3/5/2021	Draft examination questions for J. Ah Sing and email re: same [1.40]; review interest calculation and confer with and email to L. Beck re: [REDACTED] [.70]; draft 4th Declaration re: information requested by Board [.40]	2.50	2.50	\$ 275.00
3/8/2021	Notice from HLRB re: zoom hearing, and emails to and from client re: same (.30); examination questions for L. Beck, email and confer re: [REDACTED] [.60]; email to client re: exhibits for each witness [.50]; confer with J. Ah Sing re: [REDACTED] [.50]; prepare for hearing [1.00]	3.60	3.60	\$ 275.00
3/9/2021	Prepare for and appear at hearing on Motion for Remedy [3.70]; confer with L. Beck [REDACTED] [.30]; confer with UPW employee (multiple times) re: zoom assistance [.20]; confer with J. Ah Sing re: [REDACTED] [.40]; confer with D. Fiaui and L. Beck re: [REDACTED] [.40]; research re: article cited by J. Halvorson [.20].	3.90	3.90	\$ 275.00
3/10/2021	Review Exhibit 1 submitted by State and review rules [.20]; confer with J. Halvorson re: same [.30].	0.50	0.50	\$ 275.00
3/11/2021	Confer with J. Perry re: timing of transcript.	0.00	0.00	\$ 275.00
3/12/2021	Confer with J. Halvorson re: objections to Civil Beat article and submission of vacation pay schedule (.20); review vacation pay schedule and draft submission document re: same [.30]; draft objection to REM Ex-1 [.50]	1.00	1.00	\$ 275.00
3/15/2021	Review transcript re: argument on rebuttal evidence [.30]; Objection to Civil Beat article (.70).	1.00	1.00	\$ 275.00
3/16/2021	Finalize Objection to REM-Ex 1 (Civil Beat article).	0.20	0.20	\$ 275.00
3/30/2021	Research re: interest issue.	0.80	0.80	\$ 275.00
3/31/2021	Research re: interest awards against State (2.10); draft Post Hearing Brief [.70].	2.80	2.80	\$ 275.00
4/1/2021	Further research for and draft of Post Hearing Brief	2.00	2.00	\$ 275.00
4/5/2021	Follow-up re: Confidential Information Statement filing [.40]; email to HLRB clerk re: same [.10]; confer with D. Fiaui re: [REDACTED] [.20]; review transcript of hearing [1.60].	2.00	2.00	\$ 275.00
4/6/2021	Further research re: liability of Respondent parties.	1.50	1.50	\$ 275.00
4/7/2021	Further research re: liability of Respondent parties [1.00]; emails from and to HLRB re: filing of Confidential information and protective order status [.30]; further draft of Post Hearing Brief [.90].	1.90	1.90	\$ 275.00
4/8/2021	Further draft of Post Hearing Brief [3.40]; breakdown of Takahashi fees and costs [REDACTED] [.70]; confer with and email to J. Halvorson re: protective order issues and extension of deadline for Post Hearing Brief [.30].	4.40	4.40	\$ 275.00

4/9/2021	Confer with M. Hirata re: hearing on Motion for Protective Order and extension re: Post Hearing Brief [.40]; draft Supplemental Declaration re: Attorneys Fees [.30]; further draft of Post Hearing Brief [.70].	1.00	1.00	\$ 275.00
4/12/2021	Notices from Court re: hearing on Motion for Protective order and extension to file Post-Hearing Brief.	0.00	0.00	\$ 275.00
4/14/2021	Hearing on Motion for Protective Order [.70]; further research re: issue of which party may be liable for money damages [.20]; further draft and review of Post Hearing Brief [.70]; call and email to J. Ah Sing re: filing of tax records [.20].	1.80	1.80	\$ 275.00
4/15/2021	Confer with J. Ah Sing re: tax records and financial information [.10]; email to J. Ah Sing re: same [.20]; review and redact tax records re: Board ruling, and draft new Confidential Information form [.20].	0.50	0.50	\$ 275.00
4/16/2021	Confer with M. Hirata (multiple times) re: filing of tax records [.30]; revise Ex K and Confidential Information Form [.30]; email to HLRB re: same [.10].	0.30	0.30	\$ 275.00